

## **REMARKS/ARGUMENTS**

In the Office Action, the Examiner rejected claims 4 and 5 under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement; rejected claims 1-5, 7-12, 17-21, 23-28, and 33-35 under 35 U.S.C. 102(e) as being anticipated by *Malagrino et al.* (U.S. Patent No. 6,714,985); and rejected claims 6, 13-16, 22, and 29-32 under 35 U.S.C. 103(a) as being unpatentable over *Malagrino et al.* in view of *Borella et al.* (U.S. Patent No. 6,643,259). The rejections are fully traversed below. Reconsideration of the application is respectfully requested based on the following remarks. Claims 1, 4, 5, 17, 20, 21, 33, and 35 have been amended to further clarify the invention. New claims 36-39 have been added. (Support for the amendments can be found in Fig. 3B (e.g., Syn, Syn-Ack, Ack, Fin, Fin-Ack, Ack) and elsewhere. Accordingly, claims 1-39 are now pending in this application.

### **CLAIMS 4 AND 5 UNDER 35 U.S.C. 112, FIRST PARAGRAPH**

The Examiner stated that claims 4 and 5 contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the Examiner stated that the term “total flows” has not been described in the specification in regards to its relation of setting a timer.

Support for the term “total flows” may be found in the specification on page 22, line 14 to page 23, line 9, Fig. 11, and elsewhere. The term “total flows” is understood by one skilled in the art, especially in the context of TCP flows. Nevertheless, claims 4 and 5 have been amended to omit “total” from the term “total flows”. Accordingly, it is respectfully requested that the rejection under 35 U.S.C. 112, first paragraph, be removed.

### **CLAIMS 1-5, 7-12, 17-21, 23-28, AND 33-35 UNDER 35 U.S.C. 102(e)**

Claim 1 pertains to a method for combining data segments. Claim 1 requires among other things that “at a combiner node, establishing a flow between a first node and the combiner node”. Claim 17 pertains to a router operable to combine data segments. Claim 17 requires among other things that “at the router, establishing a flow between a first node and the router”. Claim 33 pertains to a computer program product for combining data segments. Claim 33 requires among other things “computer program instructions stored within the at least one

computer readable product configured to cause a combining device to: at a combining device, establishing a flow between a first node and the combining device”. Claim 35 pertains to an apparatus for combining data segments. Claim 35 requires among other things “means for at a combiner node, establishing a flow between a first node and the combiner node”.

An advantage of the present invention allows the combiner node/router/combining device to establish separate flows with other nodes. For example, referencing Fig. 3B, a first flow (e.g., set of Syn, Syn-Ack, Ack, Fin, Fin-Ack, and Ack) is established between client 302 and data combiner 304 and a second flow (e.g., set of Syn, Syn-Ack, Ack, Fin, Fin-Ack, Ack) is established between data combiner 304 and server 306. The client never has a direct connection to the actual server. As such, load balancing between many servers that all perform similar functions can be realized.

In contrast, *Malagrino et al.* does not disclose establishing a flow between a first node and the combiner node/router/combining device. *Malagrino et al.* merely discloses fragment reassembly and a single flow (e.g., between server and client; H1 and H2 of FIG. 2). To understand this better, a packet from a host H1 to a host H2 may go through many routers/switches (e.g., S1, S2, S3, S4, S5, S6 of FIG. 2). If the packet is too big to be sent from a router/switch to the next router/switch, it gets fragmented into smaller frames and reassembled together at another router/switch before reaching H2. (See Fig. 2) Regardless of the number of intermediate routers/switches that the packet/fragments travel through, *Malagrino et al.* merely discloses a flow between the host H1 (e.g., client) and the host H2 (e.g., server) and not between a first node (e.g., client or server) and the combiner node/router/combining device. Accordingly, it is respectfully submitted that claims 1, 17, 33, and 35 are patently distinct from *Malagrino et al.*

The Examiner’s rejections of the dependent claims are respectfully traversed. However, to expedite prosecution, all of these claims will not be argued separately. Claims 2-5, 7-12, 18-21, 23-28, and 34 each depend either directly or indirectly from independent claims 1, 17, or 33 and, therefore, are respectfully submitted to be patentable over cited arts for at least the reasons set forth above with respect to claims 1, 17, or 33. Further, the dependent claims require additional elements that when considered in context of the claimed inventions further patentably distinguish the invention from the cited arts.

### CLAIMS 6, 13-16, 22, AND 29-32 UNDER 35 U.S.C. 103(a)

The Examiner cited *Malagrino et al.* as prior art in supporting the rejections of claims 6, 13-16, 22, and 29-32 under 35 U.S.C. §103(a). However, the Undersigned respectfully submits that *Malagrino et al.* be disqualified as prior art in view of 35 U.S.C. §103(c) or M.P.E.P 2146. The applicability of 35 U.S.C. §103(c) is available to applications filed on or after November 29, 1999. Specifically, 35 U.S.C. §103(c) provides: "Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As applied to 35 U.S.C. §103(c), *Malagrino et al.* contains subject matter developed by another person (i.e., *Malagrino et al.* – at least one different inventor listed). *Malagrino et al.* also "qualifies" as prior art under 35 U.S.C. §102(e) since *Malagrino et al.* was filed on April 28, 2000, which was before the Applicants' application filing date of June 1, 2001, and published under 35 U.S.C. §122(b). Further, as evidenced by the Assignee designations in *Malagrino et al.* and Applicants' application, there is common ownership (i.e., Cisco Technology, Inc.) of the subject matter disclosed in *Malagrino et al.* and the claimed invention at the time the invention was made. That is, Applicants' application and *Malagrino et al.* were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s). Because *Malagrino et al.* was used by the Examiner in an obviousness rejection under 35 U.S.C. §103(a), the Undersigned would respectfully submit that *Malagrino et al.* be disqualified as prior art in accordance to M.P.E.P. 706.02(l)(3) and that claims 6, 13-16, 22, and 29-32 are in condition for allowance. However, it should be noted that the submittal of *Malagrino et al.* be disqualified as prior art in view of 35 U.S.C. §103(c) or M.P.E.P 2146 should not be construed as an admittance on behalf of the Applicants of any obviousness that may be attributed to *Malagrino et al.*

### SUMMARY

It is respectfully submitted that all pending claims are allowable and that this case is now in condition for allowance. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

If any fees are due in connection with the filing of this Amendment, the Commissioner is authorized to deduct such fees from the undersigned's Deposit Account No. 50-0388 (Order No. CISCP127).

Respectfully submitted,  
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